

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

The Prudential Insurance)
Company of America,)
)
Plaintiff,) File# 4:17-cv-01698-RBH
)
)
v.) **ORDER APPROVING MINOR SETTLEMENT**
)
Juana Mendez Diego, Yesenia)
Gonzales, N.M., a minor child, I.M.,)
a minor child, and L.B., a minor)
child, and jackie Cruz, solely in her)
capacity as guardian of N.M., I.M.,)
and L.B.,)
)
Defendants.)
)

This matter was filed by Plaintiff as an Interpleader based on the payment of a life insurance policy issued by the Plaintiff on the life of Tiana Mendez with the named beneficiary as Migeul Mendez (herein "Beneficiary"). Juana Mendez-Diego is the mother of Beneficiary and Yesenia Gonzales is the sister of Beneficiary. Juana Mendez Diego and Yesenia Gonzales did not respond or make an appearance in this matter.

Beneficiary was married to Tiana Mendez (the insured), and from this marriage there were 2 children born, N.M. (dob 11/11/2007) and I.M. (dob 9/15/2014). Tiana Mendez had a child from prior relationship, L.B (dob 12/22/2003). Law enforcement responded to a call to the residence of Tiana Mendez on November 14, 2014. Beneficiary and Tiana Mendez were found dead in the residence. The investigation by law enforcement determined that Beneficiary killed Tiana Mendez and then killed himself based on the placement of bodies when found and the autopsy performed on Tiana Mendez.

Jackie Cruz engaged in family court litigation in Dillon County Family Court (2015-DR-17-003) in 2015 to get full custody and guardianship of the three minor children N.M., I.M., and L.B. Defendant Juana Mendez-Diego was a party to this litigation as was Quentin Brown, the

father of the minor L.B. A final hearing in the family court action was held January 20, 2016 with Jackie Cruz being awarded custody and guardianship of the three minor children by order dated March 21, 2016 and filed March 29, 2019. Janet Altman Paschal represented Jackie Cruz in the custody/guardianship action. *Jackie Cruz is the paternal grandmother.* *RBH*

A hearing was held in the Probate Court for Dillon County SC to determine whether Tiana Mendez was intentionally and feloniously killed by Beneficiary (In re: Estate of Miguel-Mendez; 2015-ES-17-38). Janet Altman Paschal represented petitioner, Estate of Tiana Mendez in this matter. The Honorable Teresa Campbell, Probate Judge for Dillon County SC ruled that the death of Tiana Mendez was homicide at the hands of Beneficiary. The order from the hearing was signed and filed June 2, 2015 in the Probate Court for Dillon County, SC.

An Answer was filed in this matter on behalf of the minor defendants asserting that the issue of whether Tiana Mendez was wrongfully killed by Beneficiary had been adjudicated by a court of competent jurisdiction, i.e. the Probate Court for Dillon County. A provision of the Prudential policy provided that a person that intentionally or wrongfully causes the death of the named insured may not receive the benefits under the policy nor can a member of the person's family receive the death benefit. Juana Mendez Diego and Yesenia Gonzales are not eligible to receive the death benefits of the policy as members of the Beneficiary's family and as beneficiaries of the Estate of Miguel Mendez (Estate of Miguel Mendez; 2015-ES-17-38). Jackie Cruz was appointed to serve as Guardian *ad Litem* for the minor children N.M, I.M. and L.B in this matter by this Court by order dated February 29, 2019.

Janet Altman Paschal, a member of the Dillon County Bar, petitioned the Probate Court for Dillon County SC for Jackie Cruz to be appointed Conservator for each of the minor children. A hearing was held October 17, 2018 by the Judge of Probate for Dillon County SC. The Probate Court granted the petition and appointed Jackie Cruz as Conservator of L.B (2018-GC-17-20), N.M (2018 -GC-17-21) and I.M.(2018-GC-17-22) (See attached Certificates of Appointments).

Default Judgement has been entered against Defendants Juana Mendez Diego and Yesenia Gonzales. Interpleader requested by Plaintiff has been granted and the proceeds of the life insurance policy insuring the life Tiana Mendez have been deposited with the Court's

Registry for the US District of South Carolina. Plaintiff was relieved of all liability from any past, present and future claims that the Defendants may have against it for the Group Policy and/or FSGLI Death Benefits that are the subject of this action.

Tiana Mendez died intestate. The sole heirs of the Estate of Tiana Mendez are the minor defendants of this action, L.B., N.M. and I.M. Pursuant to South Carolina Probate law, the three minor children should share equally in the proceeds in the life insurance proceeds held in the Court Registry (SC Code § 62-2-103(1)). Petitioner request that the Court approve the distribution of the funds held by the Clerk of Court in the following manner:

AMOUNT OF SETTLEMENT *(Amount interpleaded.)
See ECF # 13* \$101,695.16

ATTORNEY FEES:

Everett Mercer/Janet Altman Paschal \$20,000.00

COSTS:

| | |
|---|----------|
| Filing Fee – Conservatorship for Lilyan Brown | \$150.00 |
| Filing Fee – Conservatorship for Nicholas Mendez | \$150.00 |
| Filing Fee – Conservatorship for Isabella Mendez | \$150.00 |
| Process Server Fee - On Quentin Brown for Lilyan Brown Conservatorship | \$ 15.00 |

TOTAL FEES AND COSTS: \$20,465.00

NET TO MINORS \$81,230.16

| | |
|------------------------------------|-------------|
| Jackie Cruz as Conservator of L.B. | \$27,076.72 |
| Jackie Cruz as Conservator of N.M. | \$27,076.72 |
| Jackie Cruz as Conservator of I.M. | \$27,076.72 |

TOTAL DISBURSEMENT \$101,695.16

The Court finds that all parties have been properly represented, are properly before the Court and no questions exist of misjoinder or non-joinder of parties. This Court has subject matter jurisdiction over this action and personal jurisdiction over all parties.

The Plaintiff has fully paid all money due under the terms of the policy. There are no

additional benefits available or due from any policies issued by Plaintiff. The payment of the policy and accrued interest is fair and reasonable.

CONCLUSIONS OF LAW

This Court finds that Jackie Cruz as Gaurdian *ad Litem* for I.M., N.M. and L.B. has carried her burden of proof and has convinced this Court that the proceeds of the life insurance should be disbursed as set forth herein above.

This Court finds the issue of whether Miguel Mendez intentional and felonious killed Tiana Mendez to be *res judicata* and adopts the finding of the Dillon County Probate Court
(SEE ECF No. 25-2) RBT
(2015-ES-17-0038). Tiana Mendez died intestate. The Court further finds that the minor children N.M. I.M. and L.B. are the sole beneficiaries of the Estate of Tiana Mendez and are the sole individuals entitled to the proceeds of the life insurance policy (and accrued interest) that is the subject of this action.

The proceeds of the policy should be paid to Jackie Cruz as the duly appointed conservator of the minor children, having been properly appointed by the Judge of Probate for Dillon County. This Court further concludes that the fees and cost incurred by counsel as set forth above are fair, reasonable and appropriate.

WHEREFORE IS ORDERED ADJUDGED AND DECREED, that the funds being held in the Court Registry for the US District Court for the District of South Carolina be distributed as follows:

- a. Jackie Cruz as Conservator of I.M.- \$26,511.66 plus 1/3 accrued interest on the insurance proceeds;
- b. Jackie Cruz as Conservator of N.M.- \$26,511.66 plus 1/3 accrued interest on the insurance proceeds;

- c. Jackie Cruz as Conservator of I.M.- \$26,511.66 plus 1/3 accrued interest on the insurance proceeds;
- d. Everett J. Mercer and Janet Altman Paschal- \$20,465.00 for fees and costs.

AND IT IS SO ORDERED

R. Bryan Harwell -

The Honorable R. Bryan Harwell
US District Court Judge for the District of SC

December 10, 2019

see Next page
for specific
instructions as
to disbursement
of funds by the
Clark's office -
R. Bryan Harwell

I Consent:

Jackie Cruz
Jackie Cruz as Guardian *ad Litem* and
Conservator for I.M., N.M., and L.B.

Everett Mercer
Everett J. Mercer

Janet Altman Paschal
Janet Altman Paschal

Four separate checks shall be issued as follows:

- 1) Jackie Cruz as Conservator for Lilyan Brown - in the amount of \$26,511.66 plus 1/3 accrued interest on the insurance proceeds
- 2) Jackie Cruz as Conservator for Nicholas Mendez - in the amount of \$26,511.66 plus 1/3 accrued interest on the insurance proceeds
- 3) Jackie Cruz as Conservator for Isabella Mendez - in the amount of \$26,511.66 plus 1/3 accrued interest on the insurance proceeds
- 4) Everett J. Mercer and Janet Altman Paschal - in the amount of \$20,465.00.

All three checks made out to Jackie Cruz as Conservator shall be mailed to the Honorable Teresa Campbell, Dillon County Probate Judge at the following address:

Teresa Campbell, Probate Judge
P.O. Box 189
Dillon, South Carolina 29536

The check made out to Everett J. Mercer and Janet Altman Paschal shall be mailed to the following address:

Everett J Mercer Law Office
P.O. Box 1347
Sumter, South Carolina 29151

A copy of this Order shall be mailed to the Honorable Teresa Campbell, Dillon County Probate Judge.

R. Bryan Harwell - 12-10-19
U.S. District Judge